***NAME: EKWEGBALU STEPHANIE CHINENYE***

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***COURSE TITLE: CONFLICT OF LAWS II***

1. ***Explain the term “Limping Marriage” and identify the ways at common law by which the incidence of limping marriage have been reduced.***

Limping Marriage can be defined as a situation whereby parties are recognised as being legally married in one jurisdiction while another jurisdiction does not recognise them as being married.

The term “Limping Marriage” developed as a result of marriages being recognised in one European Union and not in another.[[1]](#footnote-1)

Where a foreign decree of dissolution of marriage is not recognised in a jurisdiction, none of the parties can contract a valid marriage in that jurisdiction. This is because under the eyes of that law, they are still recognised as being legally married.

However, if that foreign decree of dissolution of marriage is recognised in the forum, the parties are free to contract subsequent marriages in the jurisdiction.

In the case of ***Padolecchia v. Padolecchia[[2]](#footnote-2)***, it was held that the husband lacked the capacity to contract a second marriage because his first marriage was still subsisting under the Italian law. In that case, the husband got married in Italy but obtained a decree of dissolution of marriage in Mexico. The Italian courts did not recognise this decree. This is a clear representation of the term “Limping Marriage”.

The way in which the incidence of limping marriage has been reduced can be seen in the case of ***Indyka v. Indyka[[3]](#footnote-3).*** In that case, it was stated that for a foreign decree of dissolution of marriage to be recognised by another jurisdiction, such party or parties must have a “***real and substantial connection”*** with the foreign country. This means that the ***requirement of domicile*** will not be strictly applied.

1. ***Explain, succinctly, Mutation or Conversion of Marriage in Conflict of Laws.***

It is generally stated by courts that parties to a polygamous marriage cannot seek matrimonial relief from common law. This is because the common law recognises monogamous marriage i.e. marriage between one man and one woman in accordance with the statement made by ***Lord Penzance*** in the famous case of ***Hyde v. Hyde[[4]](#footnote-4).*** What this means is that marriage under the common law is based on monogamy. Therefore, a polygamous marriage cannot enjoy the matrimonial benefits of the common law.

In ***Sowa v. Sowa[[5]](#footnote-5),*** the English court of Appeal stated that “if the ceremony is polygamous, then it does not come within the word “marriage” for the purposes of the Act relating to matrimonial matters...”

However, the courts have stated their displeasure with the fact that an innocent, victimized party under a polygamous marriage cannot seek matrimonial relief just because he or she isn’t married in accordance with the provisions of the Matrimonial Causes Act.

It is now possible for a polygamous marriage to be subsequently converted to a monogamous marriage for the purpose of obtaining matrimonial relief under the Act. This was supported by ***Lord Maugham*** in the ***Sinha Peerage[[6]](#footnote-6)*** case and a number of other cases.

One of the ways in which a polygamous marriage can subsequently be converted to a monogamous marriage is by change of domicile of the husband. This point is clearly stated in the case of ***Ali v. Ali.***

In that case, a man married a woman in India in accordance to Muslim law. Under Islamic law, a man is permitted to marry more than one wife. This meant that his marriage was potentially polygamous. Later on, the husband moved to England and hid wife accompanied him. In England, she birthed a son. After some time, she left England to India with the boy. He acquired a domicile of choice in England. Subsequently, the husband married another wife and she birthed a child for him. He then sought a decree of dissolution of marriage of his first marriage from the English court on the basis of desertion. The first wife counter-claimed, stating that she left on the basis of cruelty and also, the marriage between them was a polygamous marriage which meant that the English court did not have jurisdiction to try the case. She also brought an action against the husband on grounds of adultery.

***Cumming-Bruce, J.,*** then held that since the marriage was a polygamous marriage, the courts could not exercise jurisdiction over the case. However, he also held that the wife was entitled to relief in relation to adultery because as at the time the husband married the second woman, the marriage between him and the first wife had been converted to a monogamous marriage and this was because he had subsequently changed his domicile to England.

***Ali v. Ali*** raises a number of questions. However, before stating these questions, it is trite to note that there is a rule which states that the ***lex loci celebrationis*** governs the nature of a marriage. The first question raised is whether a law other than the law of the place of celebration can alter the nature of a marriage. ***Ali v. Ali*** is contrary to the supposed principle. In that case, the law of a subsequently acquired domicile was held to be relevant in deciding the nature of a marriage.

Another question is whether an intention on the part of the husband alone is sufficient to alter the character of a union by change of domicile or must the change be as a result of a bilateral decision. It is implicit in his Lordship's reasoning that an intention on the part of the husband alone is sufficient to alter the nature of the marriage.

In ***Parkasho v. Singh[[7]](#footnote-7),*** it was held that a change in the loci celebrationis can affect the nature of the marriage. This clearly states that the ***“lex loci celebrationis***” rule was disregarded in that case.

The case of ***Cheni v. Cheni[[8]](#footnote-8)*** presents a rather unique problem. In that case, the parties had entered into a marriage contract in which the husband was allowed to marry another wife during the subsistence of the first marriage if the wife could not give birth within a specified period of time. The wife eventually had children and sought relief from the English court. ***Sir Jocelyn Simon*** allowed her petition on the ground that if parties marry monogamously, the law will readily and reasonably presume that they will not relapse into polygamy.

It is very important to note that according to Dicey, matrimonial reliefs in these cases of conversion is restricted to instances where the marriage has remained merely potentially polygamous and has not actually become polygamous.

Furthermore, in the case of ***Sara v. Sara[[9]](#footnote-9),*** the wife was domiciled in British Columbia and she married her husband in India in accordance to the Hindu ceremony of marriage which permitted polygamy. The husband subsequently moved to British Columbia and acquired a domicile. He then sought a declaration that he was not a married person within the meaning of the law of British Columbia on the ground that the marriage was polygamous. The wife counter-claimed on the ground that the marriage was valid.

***Lord J.,*** dismissed the application of the husband and made the declaration sought by the wife and based his decision on two factors;

* Acquisition by the husband of a domicile of choice in British Columbia.
* The fact that subsequent to the marriage, polygamy between Hindus in India was abolished by the ***Hindu Marriage Act, 1955.***

1. <http://brophysolicitors.ie/limping-marriages-eu-divorces/> [↑](#footnote-ref-1)
2. (1968) P. 314 [↑](#footnote-ref-2)
3. (1969) 1 A.C. 53 [↑](#footnote-ref-3)
4. (1866) L.R. 1 P.&D. 130 [↑](#footnote-ref-4)
5. (1961) P. 70 C.A [↑](#footnote-ref-5)
6. Reported as an appendix to Baindail v. Baindail (1946) 1 All E.R. 342 [↑](#footnote-ref-6)
7. (1967) 2 W.L.R. 946 [↑](#footnote-ref-7)
8. (1962) 3 All E.R. 873 [↑](#footnote-ref-8)
9. (1962) 31 D.L.R. (2d) 566 [↑](#footnote-ref-9)